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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

REVMOUNTAIN, LLC, *et al.*

Defendants.

Case No. 2:17-cv-02000-APG-GWF

**DEFENDANT DANIELLE FOSS'S
ANSWER TO COMPLAINT**

Defendant Danielle Foss (“Foss”), by and through her undersigned counsel, hereby answer Plaintiff Federal Trade Commission’s (“FTC”) Complaint and assert defenses as follows:

1. Foss admits that the FTC brought this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”) and other statutes set forth in paragraph 1 of the Complaint, but denies that the FTC is entitled to any relief under those statutes and further denies that the Defendants have engaged in deceptive or unfair acts or practices in violation of the FTC Act or any other rule or statute.

JURISDICTION AND VENUE

2. Paragraph 2 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, Foss denies the basis for subject matter jurisdiction asserted in paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, Foss denies the basis for venue asserted in paragraph 3 of the Complaint.

PLAINTIFF

4. Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, Foss denies the allegations in paragraph 5 of the Complaint and further denies that she has violated any of the statutes set forth in paragraph 5 of the Complaint.

DEFENDANTS

6. Insofar as paragraph 6 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. Insofar as paragraph 7 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.

8. Insofar as paragraph 8 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Complaint.

1
2 9. Insofar as paragraph 9 of the Complaint asserts allegations with respect to a
3 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
4 to the truth of the allegations in paragraph 9 of the Complaint.
5

6 10. Insofar as paragraph 10 of the Complaint asserts allegations with respect to a
7 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations in paragraph 10 of the Complaint.
9

10 11. Insofar as paragraph 11 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 11 of the Complaint.
13

14 12. Insofar as paragraph 12 of the Complaint asserts allegations with respect to a
15 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
16 to the truth of the allegations in paragraph 12 of the Complaint.
17

18 13. Insofar as paragraph 13 of the Complaint asserts allegations with respect to a
19 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
20 to the truth of the allegations in paragraph 13 of the Complaint.
21

22 14. Insofar as paragraph 14 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 14 of the Complaint.
25

26 15. Insofar as paragraph 15 of the Complaint asserts allegations with respect to a
27 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
28 to the truth of the allegations in paragraph 15 of the Complaint.
29

1 16. Insofar as paragraph 16 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 16 of the Complaint.

4 17. Insofar as paragraph 17 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 17 of the Complaint.

8 18. Insofar as paragraph 18 of the Complaint asserts allegations with respect to a
9 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
10 to the truth of the allegations in paragraph 18 of the Complaint.

11 19. Insofar as paragraph 19 of the Complaint asserts allegations with respect to a
12 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
13 to the truth of the allegations in paragraph 19 of the Complaint.

15 20. Insofar as paragraph 20 of the Complaint asserts allegations with respect to a
16 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
17 to the truth of the allegations in paragraph 20 of the Complaint.

18 21. Insofar as paragraph 21 of the Complaint asserts allegations with respect to a
19 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
20 to the truth of the allegations in paragraph 21 of the Complaint.

22 22. Insofar as paragraph 22 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 22 of the Complaint.

25 23. Insofar as paragraph 23 of the Complaint asserts allegations with respect to a
26 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
27 to the truth of the allegations in paragraph 23 of the Complaint.

1 24. Insofar as paragraph 24 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 24 of the Complaint.

4 25. Insofar as paragraph 25 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 25 of the Complaint.

7 26. Insofar as paragraph 26 of the Complaint asserts allegations with respect to a
8 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
9 to the truth of the allegations in paragraph 26 of the Complaint.

10 27. Insofar as paragraph 27 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 27 of the Complaint.

13 28. Insofar as paragraph 28 of the Complaint asserts allegations with respect to a
14 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in paragraph 28 of the Complaint.

16 29. Insofar as paragraph 29 of the Complaint asserts allegations with respect to a
17 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
18 to the truth of the allegations in paragraph 29 of the Complaint.

19 30. Insofar as paragraph 30 of the Complaint asserts allegations with respect to a
20 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 30 of the Complaint.

22 31. Insofar as paragraph 31 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 31 of the Complaint.

1 32. Insofar as paragraph 32 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 32 of the Complaint.

4 33. Insofar as paragraph 33 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 33 of the Complaint.

7 34. Insofar as paragraph 34 of the Complaint asserts allegations with respect to a
8 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
9 to the truth of the allegations in paragraph 34 of the Complaint.

10 35. Insofar as paragraph 35 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 35 of the Complaint.

13 36. Insofar as paragraph 36 of the Complaint asserts allegations with respect to a
14 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in paragraph 36 of the Complaint.

16 37. Insofar as paragraph 37 of the Complaint asserts allegations with respect to a
17 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
18 to the truth of the allegations in paragraph 37 of the Complaint.

19 38. Insofar as paragraph 38 of the Complaint asserts allegations with respect to a
20 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 38 of the Complaint.

22 39. Insofar as paragraph 39 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 39 of the Complaint.

1 40. Insofar as paragraph 40 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 40 of the Complaint.

4 41. Insofar as paragraph 41 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 41 of the Complaint.

7 42. Insofar as paragraph 42 of the Complaint asserts allegations with respect to a
8 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
9 to the truth of the allegations in paragraph 42 of the Complaint.

10 43. Insofar as paragraph 43 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 43 of the Complaint.

13 44. Insofar as paragraph 44 of the Complaint asserts allegations with respect to a
14 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in paragraph 44 of the Complaint.

16 45. Insofar as paragraph 45 of the Complaint asserts allegations with respect to a
17 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
18 to the truth of the allegations in paragraph 45 of the Complaint.

19 46. Insofar as paragraph 46 of the Complaint asserts allegations with respect to a
20 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 46 of the Complaint.

22 47. Insofar as paragraph 47 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 47 of the Complaint.

1 48. Insofar as paragraph 48 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 48 of the Complaint.

4 49. Insofar as paragraph 49 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 49 of the Complaint.

7 50. Insofar as paragraph 50 of the Complaint asserts allegations with respect to a
8 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
9 to the truth of the allegations in paragraph 50 of the Complaint.

10 51. Insofar as paragraph 51 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 51 of the Complaint.

13 52. Insofar as paragraph 52 of the Complaint asserts allegations with respect to a
14 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in paragraph 52 of the Complaint.

16 53. Insofar as paragraph 53 of the Complaint asserts allegations with respect to a
17 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
18 to the truth of the allegations in paragraph 53 of the Complaint.

19 54. Insofar as paragraph 54 of the Complaint asserts allegations with respect to a
20 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 54 of the Complaint.

22 55. Insofar as paragraph 55 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 55 of the Complaint.

1 56. Insofar as paragraph 56 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 56 of the Complaint.

4 57. Insofar as paragraph 57 of the Complaint asserts allegations with respect to a
5 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations in paragraph 57 of the Complaint.

7 58. Insofar as paragraph 58 of the Complaint asserts allegations with respect to a
8 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
9 to the truth of the allegations in paragraph 58 of the Complaint.

10 59. Insofar as paragraph 59 of the Complaint asserts allegations with respect to a
11 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
12 to the truth of the allegations in paragraph 59 of the Complaint.

13 60. Insofar as paragraph 60 of the Complaint asserts allegations with respect to a
14 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
15 to the truth of the allegations in paragraph 60 of the Complaint.

16 61. Insofar as paragraph 61 of the Complaint asserts allegations with respect to a
17 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
18 to the truth of the allegations in paragraph 61 of the Complaint.

19 62. Insofar as paragraph 62 of the Complaint asserts allegations with respect to a
20 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
21 to the truth of the allegations in paragraph 62 of the Complaint.

22 63. Insofar as paragraph 63 of the Complaint asserts allegations with respect to a
23 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
24 to the truth of the allegations in paragraph 63 of the Complaint.

64. Insofar as paragraph 64 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint.

65. Insofar as paragraph 65 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. Foss admits that, for a period of time, she was the senior vice president of Defendant Blue Rocket Brands. Foss is without knowledge or information sufficient to form a belief as to whether she signed corporate filings on behalf of the Corporate Defendants identified in the second sentence of paragraph 66 of the Complaint. Further, insofar as the third sentence of paragraph 66 of the Complaint does not identify the specific bank accounts purportedly held by 22 unspecified Corporate Defendants, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations. Foss denies the allegations set forth in sentences four and five of paragraph 66 of the Complaint.

67. Insofar as paragraph 67 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

COMMON ENTERPRISE

68. Insofar as paragraph 68 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint. Insofar as paragraph 68 of the Complaint asserts allegations with respect to Foss, Foss denies the allegations in paragraph 68 of the Complaint.

1 69. Insofar as paragraph 69 of the Complaint asserts allegations with respect to a
2 defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as
3 to the truth of the allegations in paragraph 69 of the Complaint. Insofar as paragraph 69 of the
4 Complaint asserts allegations with respect to Foss, Foss denies the allegations in paragraph 69 of
5 the Complaint.
6

7 70. Paragraph 70 of the Complaint asserts a legal conclusion as to which no response is
8 required. To the extent a response is required, insofar as paragraph 70 of the Complaint asserts
9 allegations with respect to a defendant other than Foss, Foss is without knowledge or information
10 sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Complaint.
11

12 71. Paragraph 71 of the Complaint asserts a legal conclusion as to which no response is
13 required. To the extent a response is required, insofar as paragraph 71 of the Complaint asserts
14 allegations with respect to a defendant other than Foss, Foss is without knowledge or information
15 sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.
16

17 72. Paragraph 72 of the Complaint asserts a legal conclusion as to which no response is
18 required. To the extent a response is required, insofar as paragraph 72 of the Complaint asserts
19 allegations with respect to a defendant other than Foss, Foss is without knowledge or information
20 sufficient to form a belief as to the truth of the allegations in paragraph 72 of the Complaint. Insofar
21 as paragraph 72 of the Complaint asserts allegations with respect to Foss, Foss denies the
22 allegations in paragraph 72 of the Complaint.
23

COMMERCE

24 73. Paragraph 73 of the Complaint asserts a legal conclusion as to which no response is
25 required. To the extent a response is required, Foss denies the allegations in paragraph 73 of the
26 Complaint.
27
28

DEFENDANTS' BUSINESS ACTIVITIES

74. Foss admits that the Corporate Defendants were in the business of selling personal care products online through various marketing offers, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 74 of the Complaint.

75. Foss denies the allegations in paragraph 75 of the Complaint.

76. Foss admits that the Corporate Defendants were in the business of selling tooth-whitening product through various marketing offers, including those identified in paragraph 76 of the Complaint.

77. Insofar as paragraph 77 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 77 of the Complaint.

78. Insofar as paragraph 78 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint.

79. Insofar as paragraph 79 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 79 of the Complaint.

80. Insofar as paragraph 80 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint.

Defendants' Websites

81. Insofar as paragraph 81 of the Complaint asserts allegations with respect to a defendant other than Foss, Foss is without knowledge or information sufficient to form a belief as

1 to the truth of the allegations in paragraph 81 of the Complaint. Foss denies owning or operating
2 any websites in her individual capacity.

3 82. Foss admits that, to the extent they exist, the websites referenced in paragraph 82 of
4 the Complaint speak for themselves and as to the type of offers made to consumers, but denies any
5 characterizations that the FTC purports to attribute to those websites.

6 83. Insofar as paragraph 83 asserts allegations pertaining to unknown or unidentified
7 affiliate networks and their business practices, Foss is without knowledge or information sufficient
8 to form a belief as to the truth of the allegations in paragraph 83 of the Complaint.

9 84. Insofar as paragraph 84 asserts allegations pertaining to an unknown or unidentified
10 affiliate network and its business practices, Foss is without knowledge or information sufficient to
11 form a belief as to the truth of the allegations in paragraph 84 of the Complaint.

12 85. Foss is without information or knowledge sufficient to form a belief as to the truth
13 of the allegations in paragraph 85 of the Complaint.

14 86. Insofar as paragraph 86 of the Complaint refers to “back-door” and “front-door”
15 landing pages—terms which are undefined and otherwise vague and subject to multiple
16 interpretations—Foss is without knowledge or information sufficient to form a belief as to the truth
17 of the allegations in paragraph 86 of the Complaint.

18 87. Insofar as paragraph 87 of the Complaint asserts allegations with respect to
19 undefined and unidentified “front-door” versions of Defendants’ sites, Foss is without knowledge
20 or information sufficient to form a belief as to the truth of the allegations in paragraph 87 of the
21 Complaint.

22 88. Insofar as paragraph 88 of the Complaint asserts allegations with respect to
23 undefined and unidentified “back-door” versions of Defendants’ sites, Foss is without knowledge
24

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1 or information sufficient to form a belief as to the truth of the allegations in paragraph 88 of the
2 Complaint.

3 89. Insofar as paragraph 89 of the Complaint asserts allegations with respect to
4 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
5 sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint.
6 Further, to the extent the landing pages exist, Foss admits that the pages speak for themselves, but
7 denies any characterizations the FTC purports to attribute to those pages.

8 90. Insofar as paragraph 90 of the Complaint asserts allegations with respect to
9 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
10 sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint.
11 Further, to the extent the landing pages exist, Foss admits that the pages speak for themselves, but
12 denies any characterizations the FTC purports to attribute to those pages.

13 91. Insofar as paragraph 91 of the Complaint asserts allegations with respect to
14 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
15 sufficient to form a belief as to the truth of the allegations in paragraph 91 of the Complaint.
16 Further, to the extent the landing pages exist, Foss admits that the pages speak for themselves, but
17 denies any characterizations the FTC purports to attribute to those pages.

18 92. Insofar as paragraph 92 of the Complaint asserts allegations with respect to
19 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
20 sufficient to form a belief as to the truth of the allegations in paragraph 92 of the Complaint.
21 Further, to the extent the landing pages and checkout page referenced in paragraph 92 exist, Foss
22 admits that the pages speak for themselves, but denies any characterizations the FTC purports to
23 attribute to those pages.

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1 93. Insofar as paragraph 93 of the Complaint asserts allegations with respect to
2 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
3 sufficient to form a belief as to the truth of the allegations in paragraph 93 of the Complaint.
4 Further, to the extent the landing pages and checkout page referenced in paragraph 93 exist, Foss
5 admits that the pages speak for themselves, but denies any characterizations the FTC purports to
6 attribute to those pages.
7

8 94. Insofar as paragraph 94 of the Complaint asserts allegations with respect to
9 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
10 sufficient to form a belief as to the truth of the allegations in paragraph 94 of the Complaint.
11 Further, to the extent the landing pages and checkout page referenced in paragraph 94 exist, Foss
12 admits that the pages speak for themselves, but denies any characterizations the FTC purports to
13 attribute to those pages.
14

15 95. Insofar as paragraph 95 of the Complaint asserts allegations with respect to
16 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
17 sufficient to form a belief as to the truth of the allegations in paragraph 95 of the Complaint.
18 Further, to the extent the landing pages exist, Foss admits that the pages speak for themselves, but
19 denies any characterizations the FTC purports to attribute to those pages.
20

21 96. Insofar as paragraph 96 of the Complaint asserts allegations with respect to
22 undefined and unidentified “back-door” landing pages, Foss is without knowledge or information
23 sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint.
24 Further, to the extent the landing pages and checkout page referenced in paragraph 96 exist, Foss
25 admits that the pages speak for themselves, but denies any characterizations the FTC purports to
26 attribute to those pages.
27
28

1 97. Insofar as paragraph 97 of the Complaint asserts allegations with respect to
2 unidentified “offers,” Foss is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations in paragraph 97 of the Complaint. Foss denies all remaining allegations in
4 paragraph 97 of the Complaint.
5

6 98. Insofar as paragraph 98 of the Complaint asserts allegations with respect to
7 unidentified tooth whitening products and unidentified consumers, Foss is without knowledge or
8 information sufficient to form a belief as to the truth of the allegations in paragraph 98 of the
9 Complaint.
10

11 99. Insofar as paragraph 99 of the Complaint asserts allegations with respect to
12 unidentified products and consumers, Foss is without knowledge or information sufficient to form
13 a belief as to the truth of the allegations in paragraph 99 of the Complaint.
14

15 100. Foss is without knowledge or information sufficient to form a belief as to what
16 consumers “realized” when obtaining a trial product and denies any individual liability associated
17 with any alleged representations made by the Corporate Defendants as to the consumers’ purchase.
18

Upsell Offers

19 101. Insofar as paragraph 101 of the Complaint asserts allegations with respect to
20 unidentified websites, Foss is without knowledge or information sufficient to form a belief as to
21 the truth of the allegations in paragraph 101 of the Complaint. Further, to the extent the websites
22 referenced in paragraph 101 exist, Foss admits that the websites speak for themselves, but denies
23 any characterizations the FTC purports to attribute to those pages.
24

25 102. Insofar as paragraph 102 of the Complaint asserts allegations with respect to
26 unidentified websites, Foss is without knowledge or information sufficient to form a belief as to
27 the truth of the allegations in paragraph 102 of the Complaint. Further, to the extent the websites
28

1 referenced in paragraph 102 exist, Foss admits that the pages speak for themselves, but denies any
2 characterizations the FTC purports to attribute to those pages.

3 103. Insofar as paragraph 103 of the Complaint asserts allegations with respect to
4 unidentified websites, Foss is without knowledge or information sufficient to form a belief as to
5 the truth of the allegations in paragraph 103 of the Complaint. Further, to the extent the websites
6 referenced in paragraph 103 exist, Foss admits that the pages speak for themselves, but denies any
7 characterizations the FTC purports to attribute to those pages. Foss is also without knowledge or
8 information sufficient to form a belief as to what consumers “realized” when completing checkout.

9
10 **VIOLATIONS OF THE FTC ACT**

11 104. Paragraph 104 of the Complaint asserts a legal conclusion as to which no response
12 is required.

13 105. Paragraph 105 of the Complaint asserts a legal conclusion as to which no response
14 is required. To the extent a response is required, Foss denies the allegations in paragraph 105 of
15 the Complaint and further denies that she has violated Section 5(a) of the FTC Act set forth in
16 paragraph 105 of the Complaint.

17
18 **COUNT I**

19
20 **Misrepresentation of the Price of Trial Offers**

21 106. Foss denies the allegations in paragraph 106 of the Complaint.

22 107. Foss denies the allegations in paragraph 107 of the Complaint and its subparts.

23 108. Foss denies the allegations in paragraph 108 of the Complaint.

24
25 **VIOLATIONS OF THE RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

26 109. Paragraph 109 of the Complaint asserts a legal conclusion as to which no response
27 is required.

110. Paragraph 110 of the Complaint asserts a legal conclusion as to which no response is required.

111. Paragraph 111 of the Complaint asserts a legal conclusion as to which no response is required.

112. Paragraph 112 of the Complaint assets a legal conclusion as to which no response is required. To the extent a response is required, Foss denies the allegations in paragraph 112 of the Complaint.

113. Paragraph 113 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, Foss denies the allegations in paragraph 113 of the Complaint.

COUNT II

Illegal Negative Option Marketing

114. Foss denies the allegations in paragraph 114 of the Complaint and its subparts.

115. Foss denies the allegations in paragraph 115 of the Complaint.

CONSUMER INJURY

116. Foss denies the allegations in paragraph 116 of the Complaint.

THIS COURT'S POWER TO GRANT RELIEF

117. Paragraph 117 of the Complaint asserts a legal conclusion as to which no response is required. To the extent a response is required, Foss denies that the FTC is entitled to the relief set forth in paragraph 117 of the Complaint.

PRAYER FOR RELIEF

118. Foss denies that the FTC is entitled to the relief set forth in the Prayer for Relief and its subparts.

AFFIRMATIVE AND OTHER DEFENSES

FIRST DEFENSE

All or some of the FTC's claims are barred because the alleged violations and damages sustained by consumers, if any, were caused by the acts or omissions of third parties over whom Foss had no control.

SECOND DEFENSE

At all times relevant hereto, Foss acted in good faith in business practices, such that she did not endeavor to create false or misleading advertisements. Evidence of good faith is material to this Court's evaluation of deliberateness and seriousness of any alleged violation and prohibits instituting a permanent injunction.

THIRD DEFENSE

Foss is not individually liable for the acts and/or omissions set forth in the Complaint, because she was not an officer, manager, operators, owner, or other authority holder of all or many of the Corporate Defendants. Therefore, she lacked the requisite control, authority, or knowledge necessary to establish personal liability with respect to all or many of the Corporate Defendants.

FOURTH DEFENSE

The Complaint fails to plead a claim for relief as against Foss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b), as the Complaint fails to plead with particularity the *who*, *what*, *when*, *where*, and *how* of the alleged fraud that is specifically attributable to the alleged actions or inactions of Foss. The FTC cannot overcome Rule 9(b)'s heightened pleading requirement by alleging a common enterprise, because common enterprise is a concept which, itself, sounds in fraud, and is unsustainable as a theory of liability unless the underlying fraudulent conduct is alleged with specificity as to Foss.

FIFTH DEFENSE

Foss is entitled to set-off, contribution, and/or indemnity should any damages be awarded against her, in the amount of the benefit received by consumers, refunds paid to consumers, the costs associated with the sale of services, and/or damages or settlements received by consumers with respect to the same alleged injuries giving rise to private causes of action.

SIXTH DEFENSE

Foss reserves the right to amend, assert and/or adopt any additional and separate defenses based upon the discovery of additional facts ascertained through continuing and ongoing investigation and discovery.

WHEREFORE, Foss requests:

- (a) that the Complaint be dismissed with prejudice;
- (b) that the FTC take nothing by the Complaint;
- (c) that Foss be awarded her costs, disbursement, attorneys' fees, and expenses incurred herein; and
- (d) that Foss be awarded such other and further relief as the Court may deem proper.

DATED this 8th day of September 2017.

By: /s/ Rachel Hirsch
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th of September, 2017, I caused a copy of the foregoing to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

/s/ Rachel Hirsch
Rachel Hirsch

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